C. J.'s Court

Arbitration application No. 23 of 2001

Bahadur Singh Patni …… Applicant

Versus

National Hydro Electric
Power Corporation Ltd.
Haryana and another …… Opp. parties

……..

Hon. A. A. Desai, C.J.

Heard Sri D. S. Patni, learned counsel for the applicant and Sri Manoj Tiwari, learned counsel for the opp. parties.

The applicant is a contractor. He submitted tender to the respondent Corporation. As one of the formalities, he has deposited earnest money. Ultimately, his offer was accepted and contract was awarded. However, the applicant-contractor refused to accept the same on the ground as submitted by the learned counsel that the awarding of work was beyond the validity period. AS a result, invoking clause under the tender notice, the Corporation forfeited the earnest money of Rs. 1,00,000/-. The applicant, therefore, presented the instant application for appointment of Arbitrator.

Clause 55 provides Arbitration. However, it envisages that such Arbitration shall be only in relation to a dispute arising out of the contract. Mr. Patni, learned counsel for the contractor- applicant tried to urge that the payment of earnest money is a part of the contract. As such, the forfeiture thereof could be a dispute arising out of the contract and, therefore, under clause 55 appointment should be made.

Mr. Manoj Tiwari, learned counsel for the opp. parties, successfully countered the submission. According to him, since the contract as awarded was not accepted the contract was not complete, hence there was no contract in legal parlance between the applicant and the Corporation. In view of this, clause 55 can not be invoked for appointment of Arbitrator as forfeiture of the earnest money is not part of the contract as envisaged by clause 55. I agree with the submission of the learned counsel.

The application is, therefore, rejected.

(A. A. Desai, C. J.)

Dt. 28.11.2002

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